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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEVADA

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5 BRADLEY V. SMITH-OSTROUMOV,

6 Plaintiff,

7 v.

8 ANDRE LONG, CLARK COUNTY SCHOOL
9 DISTRICT, *et al.*,

10 Defendants.

Case No. 3:18-cv-582-MMD-CBC

**REPORT AND RECOMMENDATION¹
BY U.S. MAGISTRATE JUDGE**

11 On December 10, 2018, Plaintiff Bradley V. Smith-Ostroumov ("Smith-
12 Ostroumov") filed an application to proceed *in forma pauperis* ("IFP") (ECF No. 2-1),
13 which the Court granted, and a *pro se* complaint, (ECF No. 2-2), which the Court timely
14 screened. On January 7, 2019, prior to the screening of the complaint or proper service,
15 Defendants filed a motion to dismiss. (ECF No. 4.) Smith-Ostroumov responded (ECF
16 No. 9) and Defendants' replied. (ECF No.10.) The Court denies the motion to dismiss
17 as premature.

18 **I. Motion to Dismiss**

19 The Court is required to screen complaints brought by parties proceeding *in forma*
20 *pauperis*. See 28 U.S.C. § 1915(e)(2); see also *Lopez v. Smith*, 203 F.3d 1122, 1129
21 (9th Cir. 2000) (en banc). Such screening is required before a litigant proceeding *in forma*
22 *pauperis* may proceed to serve a pleading. *Glick v. Edwards*, 803 F.3d 505, 507 (9th Cir.
23 2015).
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27 ¹ This Report and Recommendation is made to the Honorable Miranda M.
28 Du, United States District Judge. The action was referred to the undersigned Magistrate
Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 Defendants' motion to dismiss (ECF No. 4) was filed before the Court completed
2 mandatory screening of Smith-Ostroumov's complaint. (ECF No. 2.) Until screening was
3 completed and the court deemed any claims could proceed, the complaint was not filed
4 with the court. Therefore, at the time Defendants' filed the motion to dismiss, the Court
5 had not yet ordered service of Smith-Ostroumov's complaint as it had yet to be screened.
6 (ECF No. 4 at 4.) The Court has since screened the complaint, which renders some of
7 Defendants' arguments for dismissal moot. (*Id.* at 5-6.) Therefore, the finds that
8 Defendants' motion to dismiss should be denied because it was prematurely filed.
9 However, Defendants should be permitted to resubmit a motion to dismiss related to the
10 claims which survived screening following service of the complaint.

11 **II. CONCLUSION**

12 For the foregoing reasons, it is recommended that Defendants' motion to dismiss
13 (ECF No. 4) be **denied**.

14 The parties are advised:

15 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
16 Practice, the parties may file specific written objections to this Report and
17 Recommendation within fourteen days of receipt. These objections should be entitled
18 "Objections to Magistrate Judge's Report and Recommendation" and should be
19 accompanied by points and authorities for consideration by the District Court.

20 2. This Report and Recommendation is not an appealable order and any
21 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
22 District Court's judgment.

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DATED THIS 3rd day of July 2019.


UNITED STATES MAGISTRATE JUDGE